In the High Court of Judicature at Madras

Dated : 3.10.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) Nos. 1275 to 1278 of 2007
M.P.Nos.1,1and 1 of 2007

The Commissioner of Income Tax
Chennai. .. Appellant/ Appellant in all the cases

Vs

M/s.Thiru Arooran Sugars Ltd.,
Eldorado, 5th Floor
112, Nungambakkam High Road
Chennai 34. .. Respondent/ Respondent

TAX CASE (APPEALS) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 23.11.2006 made in I.T.A.Nos.1527/Mds/2004, 1528/Mds/2004, 1529/Mds/2004 and 1530/Mds/2004 for the assessment year 1996-97, 1997-98, 1998-99, 1999-00. 1. as against the Commissioner of Income Tax (Appeals)IV Chennai in ITA Tr.No.46/02-03 dated 5.3.2004 in G.I.No./P.A.NO.AAACT2382B for the assessment year 1996-97 2. ITA.Tr.No.47/02-03 dated 5.3.2004 in G.I.No./P.A.No.AAACT2382B for the assessment year 1997-98 3. ITA Tr.No.50/02-03 dated 5.3.2004 in G.I.No./P.A.NO.AAACT2382B for the assessmetn year 1998-99 4. I.T.A.Tr.No.84/02-03/04 dated 5.3.2004 in G.I.No./P.A.NoAAACT2382B for the assessment year 1999-2000 and 1. as against the Joint Commissioner of Income tax, Special Range,-VII Chennai in P.A.N./G.I.R.No.AAACT2382B for the assessment year 1996-97 2. P.A.N./GIR No.AAACT2382B for the assessment year 1997-98 3. P.A.N./G.I.R.No.AAACT2382B for the assessment year 1998-99 4. P.A.No.32132 for the assessment year 1999-2000.

For Appellant : Mrs.Pushya Sitaraman
Standing Counsel (Income Tax)

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JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeals are filed by the Revenue against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 23.11.2006. The relevant assessment years are 1996-97 to 1999-2000. The substantial question of law formulated for entertainment of the appeals is as follows:-

> "Whether in the facts and circumstances of the Tribunal was right in holding that the receipts on sale of levy sugar permitted to be sold in the open market; is to be treated as capital receipt ?

2. The assessee is engaged in the business of manufacture and sale of sugar. The Government had permitted to sell certain percentage of the levy sugar in open market. For the above said assessment years, the assessee claimed deduction being the surplus realisation on the sale of the levy sugar in the open market as capital receipt on the ground that this was an incentive to pay off their loans. The assessing officer did not accept the same and treated the amount as a revenue receipt and brought it to tax. Aggrieved by the order of the assessing officer, the assessee filed an appeal to the Commissioner of Income Tax (Appeals), who following the order of this Court in the case of Commissioner of Income Tax Vs. Tamilnadu Sugar Corporation Ltd., in T.C.Nos.777 and 778 of 1995 allowed the appeal by directing the assessing officer to exclude the amount claimed from the total income of the assessee. The Revenue carried the matter on appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal by following the judgment of this Court in the case of Ponni Sugars & Chemicals (260 ITR 605). The correctness of the same is now put in issue before this Court by filing this appeal.

3. Heard the learned counsel for the revenue and perused the materials on record.

4. Identical question of law came up for consideration before this Court in the case of COMMISSIONER OF INCOME TAX VS. PONNI SUGARS & CHEMICALS LTD., (260 ITR 605). In that case, the Division Bench of this Court in which one of was also a party (K.Raviraja Pandian,J.) after considering the scheme which provided incentives to new sugar factories and other incentives given by the Government by way of permitting the sugar mills to sell certain percentage of sugar in the open market has held as follows:-

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> "The line of separating "capital from revenue" is a line which is not fixed and unalterable, but one which shifts from time to time depending upon the peculiar facts of a given case. It is the sum total of all the relevant facts of a given case, which will determine the ultimate decision as to whether a particular item of receipt or expenditure is to be regarded as being in the capital field or in the revenue field. The nature of the receipt of the incentive has to be examined in the light of that object. The purpose and object of the scheme is of vital significance. If the Government found it convenient to adopt a policy of enabling the entrepreneurs to initially fund the capital cost of the project by obtaining loans from the public financial institutions by inducing the entrepreneur and the lender institution to rely upon the incentives provided under the scheme for discharging such loans, it cannot be said that the incentive given being post production, though meant exclusively for meeting the capital cost, the amount of the incentive would be a trading receipt in the hands of the recipient. The fact that the receipt was subsequent to the commencement of production cannot be allowed to stand in the way of its proper treatment as a receipt in the capital field meant to meet a capital cost."

The above judgment has taken into consideration all the earlier judgments, which considered the various other incentive schemes and held as above. Following the above said judgment, as the issue is covered by the said decision, these tax case appeals are dismissed. Consequently, the connected M.Ps are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal, III Floor, Rajaji
Bhavan, Besant Nagar, Madras 90 (with records five copies).

2. The Joint Commissioner of Income Tax,
Special Range VII, Chennai 34.

3. The Commissioner of Income Tax, Chennai.

4. The Commissioner of Income Tax (Appeals) IV
Chennai.

1 cc to Mrs. Pushya Sitaraman, Senior Standing Counsel for Income Tax, Sr. 61911

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